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AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 413

Introduced by Assembly Member Fuentes

February 23, 2009

An act to amend Sections 327, 382, 739.1, and 747 of, and to add Sections 365.1, 739.9, 745, and 748 to, the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 413, as amended, Fuentes. Energy: rates.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable.

This bill would prohibit the commission, prior to January 1, ~~2016~~ 2014, from requiring or permitting an electrical corporation to employ mandatory or default time-variant pricing, as defined, for residential customers, but would authorize the commission to authorize an electrical corporation to offer residential customers the option of receiving service

pursuant to time-variant pricing and to participate in other demand response programs. The bill, commencing January 1, ~~2016~~ 2014, would permit the commission to approve an electrical corporation's use of time-variant pricing if residential customers have the option to not receive service pursuant to time-variant pricing and incur no additional charge, as specified, as a result of the exercise of that option.

(2) Existing law requires the commission to establish a program of assistance to low-income electric and gas customers, referred to as the California Alternate Rates for Energy or CARE program, and prohibits the cost to be borne solely by any single class of customer.

This bill would require the commission to establish the CARE program to provide assistance to low-income electric and gas customers with annual household incomes that are no greater than 200% of the federal poverty guideline levels, and require that the cost of the program not be borne solely by any single class of customer. The bill would require, for an electrical corporation or public utility that is both an electrical corporation and a gas corporation, that the cost of the program be recovered on an equal cents per kilowatthour or per-therm basis from all classes of customers that were subject to the surcharge that funded the CARE program on January 1, 2008.

(3) Existing law relative to electrical restructuring requires that the electrical corporations and gas corporations that participate in the CARE program administer low-income energy efficiency and rate assistance programs described in specified statutes, and undertake certain actions in administering specified energy efficiency and weatherization programs.

This bill would require that electrical corporations, in administering the specified energy efficiency and weatherization programs, target energy efficiency and solar programs to upper-tier and multifamily customers in a manner that will result in long-term permanent reductions in electricity usage at the dwelling units and develop programs that specifically target nonprofit affordable housing providers, including weatherization of existing dwelling units and replacement of inefficient appliances. The bill would require the commission, by not later than December 31, 2020, to ensure that all eligible low-income electricity and gas customers are given the opportunity to participate in low-income energy efficiency programs, including customers occupying apartment houses or similar multiunit residential structures, and would require the commission and electrical corporations and gas corporations to expend all reasonable efforts to coordinate ratepayer-funded programs with

other energy conservation and efficiency programs and to obtain additional federal funding to support actions undertaken pursuant to this requirement.

(4) Existing law relative to electrical restructuring requires the commission to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers.

Existing law requires the commission to designate a baseline quantity of electricity and gas necessary for a significant portion of the reasonable energy needs of the average residential customer, and requires that electrical and gas corporations file rates and charges, to be approved by the commission, providing baseline rates and requires the commission, in establishing baseline rates, to avoid excessive rate increases for residential customers.

Existing law, enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department’s acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law provides that the department is entitled to recover certain expenses resulting from its purchases and sales of electricity and authorizes the commission to enter into an agreement with the department relative to cost recovery. That law prohibits the commission from increasing the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities, until the department has recovered the costs of electricity it procured for electrical corporation retail end-use customers. That law also suspends the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law.

This bill would delete the prohibition that the commission not increase the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities. The bill would authorize the commission, until January 1, 2019, to increase the rates charged residential customers for electricity usage up to 130% of the baseline quantities by the annual percentage change in the Consumer

Price Index from the prior year plus 1%, but not less than 3% and not more than 5% per year. This authorization would be subject to the limitation that rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, not exceed 90% of the system average rate, as defined. The bill would authorize the commission to increase the rates for participants in the CARE program, subject to certain limitations. The bill would delete the existing suspension of direct transactions in the Water Code that was adopted during the energy crisis of 2000–01, and would instead require the commission to authorize direct transactions subject to a phase-in schedule of not less than 3 years and not more than 5 years, and subject a maximum allowable total kilowatthours annual limit established, as specified, for each electrical corporation. The bill would continue the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions.

(5) Existing law requires the commission to prepare and submit to the Governor and the Legislature a written report on an annual basis before February 1 of each year on the costs of programs and activities conducted by an electrical corporation or gas corporation that has more than a specified number of customers in California.

This bill would change the submission date to April 1 of each year, and would also require a separate report, due May 1 and annually thereafter, to contain the commission's recommendations for actions that can be undertaken to limit utility costs and rate increases, consistent with the state's energy and environmental goals. The bill would require the commission to annually require electrical and gas corporations that have more than a specified number of customers in California to study and report to the commission on measures that these corporations recommend be undertaken to limit utility costs and rate increases.

(6) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain of the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 327 of the Public Utilities Code is
2 amended to read:

3 327. (a) The electrical corporations and gas corporations that
4 participate in the California Alternate Rates for Energy (CARE)
5 program, as established pursuant to Section 739.1, shall administer
6 low-income energy efficiency and rate assistance programs
7 described in Sections 382, 739.1, 739.2, and 2790, subject to
8 commission oversight. In administering the programs described
9 in Section 2790, the electrical corporations and gas corporations,
10 to the extent practicable, shall do all of the following:

11 (1) Continue to leverage funds collected to fund the program
12 described in subdivision (a) with funds available from state and
13 federal sources.

14 (2) Work with state and local agencies, community-based
15 organizations, and other entities to ensure efficient and effective
16 delivery of programs.

17 (3) Encourage local employment and job skill development.

18 (4) Maximize the participation of eligible participants.

19 (5) Work to reduce consumers electric and gas consumption,
20 and bills.

21 (6) For electrical corporations, target energy efficiency and solar
22 programs to upper-tier and multifamily customers in a manner that
23 will result in long-term permanent reductions in electricity usage
24 at the dwelling units, and develop programs that specifically target
25 nonprofit affordable housing providers, including weatherization
26 of existing dwelling units and replacement of inefficient appliances.

27 (7) For electrical corporations and for public utilities that are
28 both electrical corporations and gas corporations, allocate the costs
29 of the CARE program on an equal cents per kilowatthour or equal
30 cents per therm basis to all classes of customers that were subject
31 to the surcharge that funded the program on January 1, 2008.

32 (b) If the commission requires low-income energy efficiency
33 programs to be subject to competitive bidding, the electrical and

1 gas corporations described in subdivision (a), as part of their bid
2 evaluation criteria, shall consider both cost-of-service criteria and
3 quality-of-service criteria. The bidding criteria, at a minimum,
4 shall recognize all of the following factors:

5 (1) The bidder's experience in delivering programs and services,
6 including, but not limited to, weatherization, appliance repair and
7 maintenance, energy education, outreach and enrollment services,
8 and bill payment assistance programs to targeted communities.

9 (2) The bidder's knowledge of the targeted communities.

10 (3) The bidder's ability to reach targeted communities.

11 (4) The bidder's ability to utilize and employ people from the
12 local area.

13 (5) The bidder's general contractor's license and evidence of
14 good standing with the Contractors' State License Board.

15 (6) The bidder's performance quality as verified by the funding
16 source.

17 (7) The bidder's financial stability.

18 (8) The bidder's ability to provide local job training.

19 (9) Other attributes that benefit local communities.

20 (c) Notwithstanding subdivision (b), the commission may
21 modify the bid criteria based upon public input from a variety of
22 sources, including representatives from low-income communities
23 and the program administrators identified in subdivision (b), in
24 order to ensure the effective and efficient delivery of high quality
25 low-income energy efficiency programs.

26 SEC. 2. Section 365.1 is added to the Public Utilities Code, to
27 read:

28 365.1. (a) Except as expressly authorized by this section, and
29 subject to the limitations in subdivisions (b) and (c), the right of
30 retail end-use customers pursuant to this chapter to acquire service
31 from other providers is suspended until the Legislature, by statute,
32 lifts the suspension or otherwise authorizes direct transactions. For
33 purposes of this section, "other provider" means any person,
34 corporation, or other entity that is authorized to provide electric
35 service within the service territory of an electrical corporation
36 pursuant to this chapter, and includes an aggregator, broker, or
37 marketer and an electric service provider. "Other provider" does
38 not include a community choice aggregator and the limitations in
39 this section do not apply to the sale of electricity by "other
40 providers" to a community choice aggregator for resale to

1 community choice aggregation electricity consumers pursuant to
2 Section 366.2.

3 (b) The commission shall allow individual retail nonresidential
4 end-use customers to acquire electric service from other providers
5 in each electrical corporation's distribution service territory, up to
6 a maximum allowable total kilowatthours annual limit. The
7 maximum allowable annual limit shall be established by the
8 commission for each electrical corporation at the maximum total
9 kilowatthours supplied by all other providers to distribution
10 customers of that electrical corporation during a sequential
11 12-month period between April 1, 1998, and the effective date of
12 this section. ~~Within six months of the effective date of this section,~~
13 ~~or by July 1, 2010, whichever is sooner~~ *January 1, 2010. By July*
14 *1, 2010*, the commission shall adopt and implement a phase-in
15 schedule of not less than three years, and not more than five years,
16 to raise the allowable limit of kilowatthours supplied by other
17 providers in each electrical corporation's distribution service
18 territory from the number of kilowatthours provided by other
19 providers as of the effective date of this section *January 1, 2010*,
20 to the maximum allowable annual limit for that electrical
21 corporation's distribution service territory. The commission shall
22 review and, if appropriate, modify its currently effective rules
23 governing direct transactions, but that review shall not delay the
24 start of the phase-in schedule.

25 (c) Once the commission has authorized additional direct
26 transactions pursuant to subdivision (b), it shall do both of the
27 following:

28 (1) Ensure that other providers are subject to the same
29 requirements that are applicable to the state's three largest electrical
30 corporations pursuant to the resource adequacy requirements
31 established by the commission pursuant to Section 380, the
32 renewables portfolio standard adopted by the commission pursuant
33 to Article 16 (commencing with Section 399.11), and the
34 requirements for the electricity sector adopted by the State Air
35 Resources Board pursuant to the California Global Warming
36 Solutions Act of 2006 (Division 25.5 (commencing with Section
37 38500) of the Health and Safety Code). This requirement applies
38 notwithstanding any prior decision of the commission to the
39 contrary.

(2) (A) Ensure that, in the event that the commission authorizes, in the situation of a contract with a third party, or orders, in the situation of utility-owned generation, an electrical corporation to obtain generation resources that the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory, the net capacity costs of those generation resources are allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the commission, to all of the following:

- (i) Bundled service customers of the electrical corporation.
- (ii) Customers that purchase electricity through a direct transaction with other providers.
- (iii) Customers of community choice aggregators.

(B) The resource adequacy benefits of new generation resources, acquired by an electrical corporation pursuant to subparagraph (A) shall be allocated to all customers who pay their net capacity costs. Net capacity costs shall be determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource. An energy auction shall not be required as a condition for applying this allocation, but may be allowed as a means to establish the energy and ancillary services value of the resource for purposes of determining the net costs of capacity to be recovered from customers pursuant to this paragraph, and the allocation of the net capacity costs of contracts with third parties shall be allowed for the terms of those contracts.

(C) It is the intent of the Legislature, in enacting this paragraph, to provide additional guidance to the commission with respect to the implementation of subdivision (g) of Section 380, as well as to ensure that the customers to whom the net costs and benefits of capacity are allocated are not required to pay for the cost of electricity they do not consume.

(d) (1) If the commission approves a centralized resource adequacy mechanism pursuant to subdivisions (h) and (i) of Section 380, upon the implementation of the centralized resource adequacy mechanism the requirements of paragraph (2) of subdivision (c) shall be suspended. If the commission later orders that electrical

1 corporations cease procuring capacity through a centralized
2 resource adequacy mechanism, the requirements of paragraph (2)
3 of subdivision (c) shall again apply.

4 (2) If the use of a centralized resource adequacy mechanism is
5 authorized by the commission and has been implemented as set
6 forth in paragraph (1), the net capacity costs of generation resources
7 that the commission determines are required to meet urgent system
8 or urgent local grid reliability needs, and that the commission
9 authorizes to be procured outside of the Section 380 or Section
10 454.5 processes, shall be recovered according to the provisions of
11 paragraph (2) of subdivision (c).

12 (3) Nothing in this subdivision supplants the resource adequacy
13 requirements of Section 380 or the resource procurement
14 procedures established in Section 454.5.

15 (e) The commission may report to the Legislature on the efficacy
16 of authorizing individual retail end-use residential customers to
17 enter into direct transactions, including appropriate consumer
18 protections.

19 SEC. 3. Section 382 of the Public Utilities Code is amended
20 to read:

21 382. (a) Programs provided to low-income electricity
22 customers, including, but not limited to, targeted energy-efficiency
23 services and the California Alternate Rates for Energy program
24 shall be funded at not less than 1996 authorized levels based on
25 an assessment of customer need.

26 (b) In order to meet legitimate needs of electric and gas
27 customers who are unable to pay their electric and gas bills and
28 who satisfy eligibility criteria for assistance, recognizing that
29 electricity is a basic necessity, and that all residents of the state
30 should be able to afford essential electricity and gas supplies, the
31 commission shall ensure that low-income ratepayers are not
32 jeopardized or overburdened by monthly energy expenditures.
33 Energy expenditure may be reduced through the establishment of
34 different rates for low-income ratepayers, different levels of rate
35 assistance, and energy efficiency programs.

36 (c) Nothing in this section shall be construed to prohibit electric
37 and gas providers from offering any special rate or program for
38 low-income ratepayers that is not specifically required in this
39 section.

(d) Beginning in 2002, an assessment of the needs of low-income electricity and gas ratepayers shall be conducted periodically by the commission with the assistance of the Low-Income Oversight Board. The assessment shall evaluate low-income program implementation and the effectiveness of weatherization services and energy efficiency measures in low-income households. The assessment shall consider whether existing programs adequately address low-income electricity and gas customers' energy expenditures, hardship, language needs, and economic burdens.

(e) The commission shall, by not later than December 31, 2020, ensure that all eligible low-income electricity and gas customers are given the opportunity to participate in low-income energy efficiency programs, including customers occupying apartments or similar multiunit residential structures. The commission and electrical corporations and gas corporations shall make all reasonable efforts to coordinate ratepayer-funded programs with other energy conservation and efficiency programs and to obtain additional federal funding to support actions undertaken pursuant to this subdivision. These programs shall be designed to provide long-term reductions in energy consumption at the dwelling unit based on an audit or assessment of the dwelling unit, and may include improved insulation, energy efficient appliances, measures that utilize solar energy, and other improvements to the physical structure.

(f) The commission shall allocate funds necessary to meet the low-income objectives in this section.

SEC. 4. Section 739.1 of the Public Utilities Code is amended to read:

739.1. (a) As used in this section, the following terms have the following meanings:

(1) "Baseline quantity" has the same meaning as defined in Section 739.

(2) "California Solar Initiative" means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the commission in Decision 05-12-044 and Decision 06-01-024, as modified by Article 1 (commencing with Section 2851) of Chapter 9 of Part 2 and Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code.

1 (3) “CalWORKs program” means the program established
2 pursuant to the California Work Opportunity and Responsibility
3 to Kids Act (Chapter 2 (commencing with Section 11200) of Part
4 3 of Division 9 the Welfare and Institutions Code).

5 (4) “Public goods charge” means the nonbypassable separate
6 rate component imposed pursuant to Article 7 (commencing with
7 Section 381) of Chapter 2.3 and the nonbypassable system benefits
8 charge imposed pursuant to the Reliable Electric Service
9 Investments Act (Article 15 (commencing with Section 399) of
10 Chapter 2.3).

11 (b) (1) The commission shall establish a program of assistance
12 to low-income electric and gas customers with annual household
13 incomes that are no greater than 200 percent of the federal poverty
14 guideline levels, the cost of which shall not be borne solely by any
15 single class of customer. The program shall be referred to as the
16 California Alternate Rates for Energy or CARE program. The
17 commission shall ensure that the level of discount for low-income
18 electric and gas customers correctly reflects the level of need.

19 (2) The commission may, subject to the limitation in paragraph
20 (4), increase the rates in effect for CARE program participants for
21 electricity usage up to 130 percent of baseline quantities by the
22 annual percentage increase in benefits under the CalWORKs
23 program as authorized by the Legislature for the fiscal year in
24 which the rate increase would take effect, but not to exceed 3
25 percent per year.

26 (3) Beginning January 1, 2019, the commission may, subject
27 to the limitation in paragraph (4), establish rates for CARE program
28 participants pursuant to this section and Sections 739 and 739.9,
29 subject to both of the following:

30 (A) The requirements of subdivision (b) of Section 382 that the
31 commission ensure that low-income ratepayers are not jeopardized
32 or overburdened by monthly energy expenditures.

33 (B) The requirement that the level of the discount for
34 low-income electricity and gas ratepayers correctly reflects the
35 level of need as determined by the needs assessment conducted
36 pursuant to subdivision (d) of Section 382.

37 (4) Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80
38 percent of the corresponding tier 1, tier 2, and tier 3 rates charged
39 residential customers not participating in the CARE program,
40 excluding any Department of Water Resources bond charge

1 imposed pursuant to Division 27 (commencing with Section 80000)
2 of the Water Code, the CARE surcharge portion of the public
3 goods charge, any charge imposed pursuant to the California Solar
4 Initiative, and any charge imposed to fund any other program that
5 exempts CARE participants from paying the charge.

6 (5) Rates charged to CARE program participants shall not have
7 more than three tiers. An electrical corporation that does not have
8 a tier 3 CARE rate may introduce a tier 3 CARE rate that, in order
9 to moderate the impact on program participants whose usage
10 exceeds 130 percent of baseline quantities, shall be phased in to
11 80 percent of the corresponding rates charged residential customers
12 not participating in the CARE program, excluding any Department
13 of Water Resources bond charge imposed pursuant to Division 27
14 (commencing with Section 80000) of the Water Code, the CARE
15 surcharge portion of the public goods charge, any charge imposed
16 pursuant to the California Solar Initiative, and any other charge
17 imposed to fund a program that exempts CARE participants from
18 paying the charge. For an electrical corporation that does not have
19 a tier 3 CARE rate that introduces a tier 3 CARE rate, the initial
20 rate shall be no more than 150 percent of the CARE baseline rate.
21 Any additional revenues collected by an electrical corporation
22 resulting from the adoption of a tier 3 CARE rate shall, until the
23 utility's next periodic general rate case review of cost allocation
24 and rate design, be credited to reduce rates of residential ratepayers
25 not participating in the CARE program with usage above 130
26 percent of baseline quantities.

27 (c) The commission shall work with the public utility electrical
28 and gas corporations to establish penetration goals. The
29 commission shall authorize recovery of all administrative costs
30 associated with the implementation of the CARE program that the
31 commission determines to be reasonable, through a balancing
32 account mechanism. Administrative costs shall include, but are
33 not limited to, outreach, marketing, regulatory compliance,
34 certification and verification, billing, measurement and evaluation,
35 and capital improvements and upgrades to communications and
36 processing equipment.

37 (d) The commission shall examine methods to improve CARE
38 enrollment and participation. This examination shall include, but
39 need not be limited to, comparing information from CARE and
40 the Universal Lifeline Telephone Service (ULTS) to determine

1 the most effective means of utilizing that information to increase
2 CARE enrollment, automatic enrollment of ULTS customers who
3 are eligible for the CARE program, customer privacy issues, and
4 alternative mechanisms for outreach to potential enrollees. The
5 commission shall ensure that a customer consents prior to
6 enrollment. The commission shall consult with interested parties,
7 including ULTS providers, to develop the best methods of
8 informing ULTS customers about other available low-income
9 programs, as well as the best mechanism for telephone providers
10 to recover reasonable costs incurred pursuant to this section.

11 (e) (1) The commission shall improve the CARE application
12 process by cooperating with other entities and representatives of
13 California government, including the California Health and Human
14 Services Agency and the Secretary of California Health and Human
15 Services, to ensure that all gas and electric customers eligible for
16 public assistance programs in California that reside within the
17 service territory of an electrical corporation or gas corporation,
18 are enrolled in the CARE program. To the extent practicable, the
19 commission shall develop a CARE application process using the
20 existing ULTS application process as a model. The commission
21 shall work with public utility electrical and gas corporations and
22 the Low-Income Oversight Board established in Section 382.1 to
23 meet the low-income objectives in this section.

24 (2) The commission shall ensure that an electrical corporation
25 or gas corporation with a commission-approved program to provide
26 discounts based upon economic need in addition to the CARE
27 program, including a Family Electric Rate Assistance program,
28 utilize a single application form, to enable an applicant to
29 alternatively apply for any assistance program for which the
30 applicant may be eligible. It is the intent of the Legislature to allow
31 applicants under one program, that may not be eligible under that
32 program, but that may be eligible under an alternative assistance
33 program based upon economic need, to complete a single
34 application for any commission-approved assistance program
35 offered by the public utility.

36 (f) The commission's program of assistance to low-income
37 electric and gas customers shall, as soon as practicable, include
38 nonprofit group living facilities specified by the commission, if
39 the commission finds that the residents in these facilities
40 substantially meet the commission's low-income eligibility

1 requirements and there is a feasible process for certifying that the
2 assistance shall be used for the direct benefit, such as improved
3 quality of care or improved food service, of the low-income
4 residents in the facilities. The commission shall authorize utilities
5 to offer discounts to eligible facilities licensed or permitted by
6 appropriate state or local agencies, and to facilities, including
7 women's shelters, hospices, and homeless shelters, that may not
8 have a license or permit but provide other proof satisfactory to the
9 utility that they are eligible to participate in the program.

10 (g) It is the intent of the Legislature that the commission ensure
11 CARE program participants are afforded the lowest possible
12 electric and gas rates and, to the extent possible, are exempt from
13 additional surcharges attributable to the energy crisis of 2000–01.

14 SEC. 5. Section 739.9 is added to the Public Utilities Code, to
15 read:

16 739.9. (a) The commission may, subject to the limitation in
17 subdivision (b), increase the rates charged residential customers
18 for electricity usage up to 130 percent of the baseline quantities,
19 as defined in Section 739, by the annual percentage change in the
20 Consumer Price Index from the prior year plus 1 percent, but not
21 less than 3 percent and not more than 5 percent per year. For
22 purposes of this subdivision, the annual percentage change in the
23 Consumer Price Index shall be calculated using the same formula
24 that was used to determine the annual Social Security Cost of
25 Living Adjustment on January 1, 2008. This subdivision shall
26 become inoperative on January 1, 2019, unless a later enacted
27 statute deletes or extends that date.

28 (b) The rates charged residential customers for electricity usage
29 up to the baseline quantities, including any customer charge
30 revenues, shall not exceed 90 percent of the system average rate
31 prior to January 1, 2019, and may not exceed 92.5 percent after
32 that date. For purposes of this subdivision, the system average rate
33 shall be determined by dividing the electrical corporation's total
34 revenue requirements for bundled service customers by the adopted
35 forecast of total bundled service sales.

36 (c) This section does not require the commission to increase
37 any residential rate or place any restriction upon, or otherwise
38 limit, the authority of the commission to reduce any residential
39 rate.

SEC. 6. Section 745 is added to the Public Utilities Code, to read:

745. (a) For purposes of this section, “time-variant pricing” includes time-of-use rates, critical peak pricing, and real-time pricing, but does not include programs that provide customers with discounts from standard tariff rates as an incentive to reduce consumption at certain times, including peak time rebates.

(b) The commission shall not require or permit an electrical corporation to employ mandatory or default time-variant pricing for residential customers prior to January 1, ~~2016~~ 2014.

(c) The commission may, at any time, authorize an electrical corporation to offer residential customers the option of receiving service pursuant to time-variant pricing and to participate in other demand-response programs.

(d) On and after January 1, ~~2016~~ 2014, the commission shall only approve an electrical corporation’s use of time-variant pricing if residential customers have the option to not receive service pursuant to time-variant pricing and to incur no additional charges as a result of the exercise of that option. Prohibited charges include, but are not limited to, administrative fees for switching away from time-variant pricing, hedging premiums that exceed any actual costs of hedging, and discounts or other incentives paid to customers solely to increase participation in time-variant pricing. This prohibition on additional charges is not intended to ensure that a customer will necessarily experience a lower total bill as a result of switching rate schedules.

SEC. 7. Section 747 of the Public Utilities Code is amended to read:

747. (a) It is the intent of the Legislature that the commission reduce rates for electricity and natural gas to the lowest amount possible.

(b) The commission shall prepare a written report on the costs of programs and activities conducted by each electrical corporation and gas corporation that is subject to this section, including activities conducted to comply with their duty to serve. The report shall be completed on an annual basis before April 1 of each year, and shall identify, clearly and concisely, all of the following:

(1) Each program mandated by statute and its annual cost to ratepayers.

1 (2) Each program mandated by the commission and its annual
2 cost to ratepayers.

3 (3) Energy purchase contract costs and bond-related costs
4 incurred pursuant to Division 27 (commencing with Section 80000)
5 of the Water Code.

6 (4) All other aggregated categories of costs currently recovered
7 in retail rates as determined by the commission.

8 (c) As used in this section, the reporting requirements apply to
9 electrical corporations with at least 1,000,000 retail customers in
10 California and gas corporations with at least 500,000 retail
11 customers in California.

12 (d) The report required by subdivision (b) shall be submitted to
13 the Governor and the Legislature no later than April 1 of each year.

14 (e) The commission shall post the report required by subdivision
15 (b) in a conspicuous area of its Internet Web site.

16 SEC. 8. Section 748 is added to the Public Utilities Code, to
17 read:

18 748. (a) The commission shall prepare and submit a written
19 report, separate from and in addition to the report required by
20 Section 747, to the Governor and the Legislature by May 1, 2010,
21 and annually thereafter, containing its recommendations for actions
22 that can be undertaken during the following 12 months to limit
23 utility costs and rate increases, consistent with the state's energy
24 and environmental goals, including the state's goals for reducing
25 emissions of greenhouse gases.

26 (b) In preparing the report required by subdivision (a), the
27 commission shall require electrical corporations with at least
28 1,000,000 retail customers in California and gas corporations with
29 at least 500,000 retail customers in California, to study and report
30 on measures these corporations recommend to be undertaken to
31 limit utility costs and rate increases.

32 (c) The commission shall post the report required by subdivision
33 (a) in a conspicuous area of its Internet Web site.

34 SEC. 9. Section 80110 of the Water Code is amended to read:

35 80110. (a) The department shall retain title to all electricity
36 sold by it to the retail end-use customers. The department shall be
37 entitled to recover, as a revenue requirement, amounts and at the
38 times necessary to enable it to comply with Section 80134, and
39 shall advise the commission as the department determines to be
40 appropriate.

1 (b) The revenue requirements may also include any advances
2 made to the department hereunder or hereafter for purposes of this
3 division, or from the Department of Water Resources Electric
4 Power Fund, and General Fund moneys expended by the
5 department pursuant to the Governor's Emergency Proclamation
6 dated January 17, 2001.

7 (c) (1) For the purposes of this division and except as otherwise
8 provided in this section, the Public Utility Commission's authority
9 as set forth in Section 451 of the Public Utilities Code shall apply,
10 except any just and reasonable review under Section 451 shall be
11 conducted and determined by the department. Prior to the execution
12 of any modification of any contract for the purchase of electricity
13 by the department pursuant to this division, on or after the effective
14 date of this section, the department or the commission, as
15 applicable, shall do the following:

16 (A) The department shall notify the public of its intent to modify
17 a contract and the opportunity to comment on the proposed
18 modification.

19 (B) At least 21 days after providing public notice, the department
20 shall make a determination as to whether the proposed
21 modifications are just and reasonable. The determination shall
22 include responses to any public comments.

23 (C) No later than 70 days before the date of execution of the
24 contract modification, the department shall provide a written report
25 to the commission setting forth the justification for the
26 determination that the proposed modification is just and reasonable,
27 including documents, analysis, response to public comments, and
28 other information relating to the determination.

29 (D) Within 60 days of the date of receipt of the department's
30 written report, the commission shall review the report and make
31 public its comments. If the commission in its comments
32 recommends against the proposed modification, the department
33 shall not execute the proposed contract modification.

34 (2) This subdivision does not apply to the modification of a
35 contract modified to settle litigation to which the commission is
36 a party.

37 (3) This subdivision does not apply to the modification of a
38 contract for the purchase of electricity that is generated from a
39 facility owned by a public agency if the contract requires the public

1 agency to sell electricity to the department at or below the public
2 agency's cost of that electricity.

3 (4) This subdivision does not apply to the modification of a
4 contract to address issues relating to billing, scheduling, delivery
5 of electricity, and related contract matters arising out of the
6 implementation by the Independent System Operator of its market
7 redesign and technology upgrade program.

8 (5) (A) For purposes of this subdivision, the department
9 proposes to "modify" a contract if there is any material change
10 proposed in the terms of the contract.

11 (B) A change to a contract is not material if it is only
12 administrative in nature or the change in ratepayer value results
13 in ratepayer savings, not to exceed twenty-five million dollars
14 (\$25,000,000) per year. For the purpose of making a determination
15 that a change is only administrative in nature or results in ratepayer
16 savings of twenty-five million dollars (\$25,000,000) or less per
17 year, the executive director of the commission shall concur in
18 writing with each of those determinations by the department.

19 (d) The commission may enter into an agreement with the
20 department with respect to charges under Section 451 for purposes
21 of this division, and that agreement shall have the force and effect
22 of a financing order adopted in accordance with Article 5.5
23 (commencing with Section 840) of Chapter 4 of Part 1 of Division
24 1 of the Public Utilities Code, as determined by the commission.

25 (e) The department shall have the same rights with respect to
26 the payment by retail end-use customers for electricity sold by the
27 department as do providers of electricity to the customers.

28 SEC. 10. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.